



INTERIOR BOARD OF INDIAN APPEALS

Howard Crow Flies High v. Rocky Mountain Regional Director,
Bureau of Indian Affairs

38 IBIA 3 (07/03/2002)

Reconsideration denied:
38 IBIA 41



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

HOWARD CROW FLIES HIGH,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	
ROCKY MOUNTAIN REGIONAL	:	Docket No. IBIA 02-112-A
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	July 3, 2002

On May 13, 2002, the Board of Indian Appeals (Board) received a letter from Harold G. Stanton, Esq. The letter, which was dated May 10, 2002, stated in its entirety:

I am enclosing a copy of a Notice of Appeal and a Statement of Reasons for Appeal duly filed with your office and the Office of the Assistant Secretary - Indian Affairs at 1849 C Street N.W., Washington, D.C., and the Bureau of Indian Affairs Office of Trust Responsibility 1849 C Street, N.W., Washington, D.C. 20240-0001.

This appeal is directed to your office. On the chance that you did not receive it, I am re-transmitting this appeal to you. I note that I have not received a Notice of Docketing.

The notice of appeal attached to Attorney Stanton's letter was dated April 30, 2002, and was addressed to the Rocky Mountain Regional Office of the Bureau of Indian Affairs (BIA). It indicated that it sought review of an April 3, 2002, decision issued by the Rocky Mountain Regional Director, BIA (Regional Director), declining to process the application(s) of 34 individual Indians to sell "their equity in certain land on the Crow Indian Reservation" to a non-Indian. Apr. 30, 2002, Notice of Appeal at 1.

The Regional Director's April 3, 2002, decision properly notified the interested parties, including Attorney Stanton's then-client, the prospective purchaser, that any appeal was to be filed with the Board, informed them of the time limit for filing an appeal, and gave them the Board's correct mailing address.

In a May 14, 2002, order, the Board noted two problems with the filing it had received. First, nothing in the April 30, 2002, notice of appeal or in the materials Attorney Stanton submitted to the Board with his May 10, 2002, letter, showed that the April 30, 2002, notice of appeal had ever been properly filed with the Board. Second, Attorney Stanton failed to identify who he was representing. The Board gave Attorney Stanton an opportunity to identify his client(s) and to show that the April 30, 2002, notice of appeal had been properly and timely filed with the Board.

The Board received a response on June 24, 2002. Attorney Stanton identified Howard Crow Flies High (Appellant) as his client. Mr. Crow Flies High, who is one of the prospective Indian sellers, is now shown as the appellant in this appeal.

In regard to the timeliness of this appeal, Attorney Stanton submitted two affidavits, one from himself and one from Susan K. Stanton, a paralegal in Attorney Stanton's office. Attorney Stanton's affidavit states:

1. That on April 30, 2002, he prepared a Notice of Appeal and a Statement of Reasons for Appeal in the matter of the proposed purchase * * * of equities in certain land * * * located on the Crow Indian Reservation in Montana, and

2. That on that same date of April 30, 2002 he worked with Ms. Susan K. Stanton to prepare the approximately 78 copies of these documents, above noted, for mailing to the many people entitled to a copy thereof, and that he does remember the mailing of a copy thereof to the Interior Board of Indian Appeals at 801 N. Quincy Street, Arlington, VA 22203 by placing a copy thereof in the United States Post Office at Hardin, MT on that date of April 30, 2002.

Ms. Stanton's affidavit is essentially identical except that she states that she worked with Attorney Stanton in preparing the notice of appeal and statement of reasons and in preparing the copies of the documents. Her affidavit states that "he does remember the mailing of a copy" of the documents to the Board. In the context of the sentence, the "he" to whom Ms. Stanton refers is Attorney Stanton.

In American Land Development Corp. v. Acting Phoenix Area Director, 25 IBIA 120, 125, recon. denied, 25 IBIA 197 (1994), the Board held:

The Board's non-receipt of the notice of appeal, while it is some evidence that the notice was not properly mailed, is not dispositive of the question. The Board is well aware that mailed documents, even if properly addressed, do not always reach their destination. However, where the Board has not received a notice of appeal, the burden is on the appellant to show that the notice was timely mailed or delivered to the Board at its correct address.

In American Land Development Corp., the Board found unpersuasive the evidence that was submitted in support of the allegation that a notice of appeal had been timely filed.

In this case, the evidence presented in support of timely filing is much less than that presented in American Land Development Corp. In actuality, the evidence here consists only of Attorney Stanton's statement that he remembers mailing a copy of the notice of appeal to the Board. Ms. Stanton's affidavit lacks independent credibility because she does not state that she remembers anything in regard to the filing of a notice of appeal with the Board. Instead, she relates Attorney Stanton's recollection of the incident.

Under these circumstances, the Board holds that Appellant has failed to carry his burden of proving that the April 30, 2002, notice of appeal was timely filed with the Board.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Regional Director's April 3, 2002, decision is docketed but dismissed as untimely.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge